No. 21,882

ited States Court of Appeals

FOR THE NINTH CIRCUIT

FALCON PLASTICS – DIVISION OF
B–D LABORATORIES, INC.,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

On Petition for Review and
Cross-Petition for Enforcement of
an Order of
the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARNOLD ORDMAN,
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AUTHORITIES CITED

Statute:

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of Falcon Plastics – Division of B–D Laboratories, Inc. (hereafter, the Company), to review and set aside an order of the National Labor Relations Board issued May 19, 1967. In its answer the Board has requested enforcement of its order. The Board's

decision and order (R. 19-41)[1] are reported at 164 NLRB No. 101. This Court has jurisdiction of the proceedings under Section 10(e) and (f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*),[2] the unfair labor practice having occurred at Los Angeles, California, where the Company is engaged in the manufacture of disposable plastic medical and laboratory products. No jurisdictional issue is presented.

I. THE BOARD'S FINDINGS OF FACT

Briefly, the Board found that the Company violated Section 8(a)(1) of the Act by discharging employee Nhoon Reese in order to discourge the protected concerted activity in which he and two other employees participated. The evidence on which this finding was based is summarized below.

A. Background

The Company manufactures about 60 items for medical and laboratory use, including pipets, a narrow plastic tube tapered at one end and internally calibrated in milliliters (R. 21; Tr. 156-157; P. Exh. 12). The pipets are produced by an

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[1] References designated "R." are to Volume I of the record as reproduced pursuant to Rule 10 of this Court. References designated "Tr." are to the reporter's transcript of testimony as reproduced in Volume II of the record. References designated "G.C. Exh." and "P. Exh." are to the exhibits of the General Counsel and Petitioner, respectively.

[2] The pertinent statutory provisions are reprinted in Appendix A, *infra*, page A-1.

extrusion process in the Company's injection molding and extrusion department, which is under the general supervision of Rudy Lux. About 50 employees work in the department under Shirl Brayton, the administrative supervisor, and 3 other immediate supervisors. (R. 21, 22; Tr. 459, 507).[3] At the time in question here, one extrusion operator on each shift produced pipets (R. 21; Tr. 462-463).

B. The concerted activity

In March 1966,[4] Lux met with the three extrusion operators (Nhoon Reese, Governor ("Bootsie") Reese, and Horace Powell) and the extrusion department supervisors (R. 33; Tr. 111, 303, 430-431).[5] Lux informed them that the Company had purchased a new extrusion machine to produce pipets, that they would need further instruction, and that the new machines would require more work (R. 33; Tr. 110-112; 304-305, 429-431).

After meeting with Lux, the operators met alone and discussed the new development. "Bootsie" Reese stated that although they had been assigned new responsibilities, nothing had been said about a commensurate pay increase. As a result of their discussion, the operators decided that they would accept nothing less than a 25 cent an hour increase. (R. 33; Tr. 112-113, 305-306).

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[3] Altogether, the Company employs about 225 production and maintenance employees (R. 21; Tr. 223).

[4] All dates refer to 1966 unless otherwise noted.

[5] For 3 days prior to the meeting, all of the operators had been working the day shift (R. 33; Tr. 304).

C. The Company offers merit increases to the employees

Near the end of March, the Company began its semi-annual merit rating of employees. Those who had performed well during the prior six months were offered increases (R. 33; Tr. 375-376). On March 30, Powell was offered a 15-cent merit increase by his foreman, Brayton. Powell, as he had agreed to do, refused the increase. He told Brayton that he would rather continue at the old rate and have the 15 cents added to his next raise so that he would feel then that he was receiving a more adequate increase. (R. 34, 36; Tr. 114-116, 515-517). Brayton expressed surprise and lack of comprehension of the refusal and suggested that they discuss the matter with Lux when he returned to work (R. 36-37; Tr. 115, 516, 517).

That evening while the shifts were changing, Powell told Nhoon Reese, who had just arrived for the second shift, that he had turned down the merit increase. He advised Reese to do the same but to be polite and to tell his supervisor that he would rather have the increase added to his next raise (R. 33-34; Tr. 86-87, 117–118, 569).

Shortly before the end of his shift, Reese's supervisor, Byrd, offered him a ten-cent merit increase. Reese refused to accept the raise, telling Byrd that he felt the amount was inadequate. When Byrd said that the raise amounted to $10.00 a week, Reese retorted that it was "short of $10.00 by about $6.00" and if that was all the Company could offer, it could take the raise and "shove it up their butt" (R. 35; Tr. 83-86, 542-545). Byrd asked Reese if he wanted the answer noted on thc merit increase form. Reese responded in the negative and told Byrd that he only wanted the report to reflect that he desired the increase to be

included with his next raise (R. 35; Tr. 86, 577). The next day, when Brayton asked Byrd whether he had completed his merit ratings, Byrd told Brayton about the Reese incident (R. 35; Tr. 513-514, 545).

During the third shift on April 4, "Bootsie" Reese was given his merit review. He also protested that the amount was inadequate to compensate him for his added duties. However, "Bootsie's" supervisor explained that the merit raise was based on past performance and that when the new machine went into full production the wage scale would be reviewed. When these qualifications were explained, "Bootsie" accepted the increase. (R. 37, 67; Tr. 306-308).

D. Nhoon Reese's discharge

Lux returned to the plant on April 4 and was immediately informed by Brayton and Supervisor Deeds of the incidents involving Reese and Powell (R. 35; Tr. 435-436).[6] Lux told them that he would wait until Byrd came to work and would discuss the matter with him (R. 35; Tr. 437, 482). Lux then reported the incident to Horn, the Company's general manager. Horn made no recommendation regarding disciplinary action (R. 35; Tr. 279-280, 437, 483-484).

Lux next summoned Powell to his office and questioned him about his rejection of the raise (R. 37; Tr. 115). Powell explained that he did not feel the raise was adequate to compensate him for the extra work on the new machine and again requested that it be added to his next raise. Lux explained, however, that the raise was only in recognition

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[6] "Bootsie" Reese's interview was not conducted until that evening.

of past performance and that it would not affect future increases. Powell then apologized "for causing this confusion," accepted the raise and thanked Lux (R. 37; Tr. 116, 433-444, 517). Lux then asked Powell "What am I working back there, a family" and added that Nhoon Reese had "come up with somewhat the same thing" when offered his increase (R. 37; 116). Powell disavowed any connection with Reese, and when Lux mentioned the incident involving Reese, Powell said that though he (Powell) had refused the raise, he had acted in "a nice way" and without getting out of line (R. 37; Tr. 116-117). Lux stated that he had not yet decided what to do with Nhoon Reese (R. 37; Tr. 117).

When Byrd arrived, Lux and Brayton discussed Reese's refusal to accept the raise with him. Lux asked Byrd whether he was in the habit of letting his subordinates talk to him that way. Though Byrd was not offended by the remark and did not consider it a personal attack (R. 39; Tr. 552), he told Lux that Reese's actions warranted discharge and that he had been "mad enough [to] have fired [Reese] on the spot" (R. 35; Tr. 556). He explained that he did not fire Reese because he was so taken aback by the comment that he decided to wait for Lux's return and because he was not sure whether he had the authority to discharge a subordinate (R. 35; Tr. 439, 486, 547).

Lux then summoned Reese to his office and questioned him about the remark. Reese admitted making it and apologized. Lux told him that the apology did not excuse his behavior toward a supervisor, and Reese again apologized. Finally, Lux said the Company could not tolerate such behavior and he had no alternative but to discharge him. Reese again apologized and asked Lux to reconsider but Lux said that the employees could not get the idea that they could

speak to supervisors in that manner (R. 35; Tr. 88-90, 440-442, 547-549).[7]

II. THE BOARD'S CONCLUSION AND ORDER

Based on these facts, the Board found, contrary to the Trial Examiner, that the Company violated Section 8(a)(1) of the Act by discharging Nhoon Reese for engaging in protected activity in concert with the two other extrusion operators.[8]

The Board's order requires the Company to cease and desist from the unfair labor practice found, and from, in any like or related manner, interfering with, restraining or coercing employees in the exercise of their right to self-

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[7] The Company's personnel manual, which all employees received, provides for disciplinary action ranging from reprimand to discharge for "insubordination," and for a written warning, disciplinary lay-off, or discharge for employee "misconduct" (R. 39-40; Tr. 410-414). "Misconduct" included "insubordination" (R. 40; Tr. 410-414). Another rule, providing for the same penalties, covered "obscene or immoral practices" but the Company admitted that Reese was not discharged pursuant to the latter rule (R. 40; Tr. 417).

[8] In reversing the Trial Examiner, the Board did not disturb his findings of fact or credibility findings, but merely drew different conclusions from those findings. Under such circumstances, the Trial Examiner's contrary conclusions are not entitled to special weight. *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 494, 496; *N.L.R.B. v. Texas Independent Oil Co.*, 232 F. 2d 447, 451 (C.A. 9); *Cheney California Lumber Co. v. N.L.R.B.*, 319 F. 2d 375, 377 (C.A. 9).

The Board affirmed the Trial Examiner's dismissal of other Section 8(a)(1) allegations as well as the allegation that Nhoon Reese's discharge violated Section 8(a)(3) of the Act.

organization. Affirmatively, the Board ordered the Company to reinstate Nhoon Reese, to make him whole for any loss he may have suffered, and to post the appropriate notice.

ARGUMENT

SUBSTANTIAL EVIDENCE ON THE WHOLE RECORD SUPPORTS THE BOARD'S FINDING THAT THE COMPANY VIOLATED SECTION 8(a)(1) OF THE ACT BY DISCHARGING NHOON REESE BECAUSE OF HIS PROTECTED CONCERTED ACTIVITIES.

It is clear that Nhoon Reese was engaged in protected concerted activity when he and the two other extrusion operators decided to seek a twenty-five-cent an hour wage increase to compensate them for the additional work entailed by the installation of a new extrusion machine. See, *e.g., N.L.R.B. v. Washington Aluminum Co.,* 370 U.S. 9; *N.L.R.B. v. McCatron,* 216 F. 2d 212 (C.A. 9), cert. denied, 348 U.S. 943; *N.L.R.B. v. Globe Wireless, Ltd.,* 193 F. 2d 748 (C.A. 9); *N.L.R.B. v. Phaostron Instrument & Electronic Co.,* 344 F. 2d 855, 858-859 (C.A. 9); *Pacific Electricord Co.,* 153 NLRB 521, enforced *per curiam* 361 F. 2d 310 (C.A. 9). Nor can there be any doubt of the Company's knowledge that the employees were engaged in such concerted activities at the time it discharged Reese. Prior to Reese's discharge, both he and Powell rejected the tendered merit increase for the same reasons and, as they had agreed, both requested that the money be added to their next raise so they would feel they were then receiving an adequate increase (R. 33-34, 36-37; Tr. 114-116, 515-517, 83-86, 542-545, 577). Further, Brayton advised Lux of these facts (R. 35, 36-39; Tr. 435-436), and Lux admitted his knowledge of the concerted activity by asking Powell "What [he was]

vorking back there, a family" because he and Nhoon Reese iad "come up with somewhat the same thing" with regard o the increase (R. 66, 37; Tr. 98, 116).[9] Based on these acts, both the Board and the Trial Examiner found that the Company knew of the concerted activity (R. 66, 38). Thus, he only remaining question is whether Nhoon Reese was inlawfully discharged because of this activity or whether, as he Company contends, he was discharged because his remark o Byrd was insubordinate. As we show below, the Board's inding that the discharge resulted from the concerted activity s supported by substantial evidence.[10]

The language used by Reese in rejecting the merit in-rease must be judged in the context in which it occurred. See *Butcher Boy Refrigerator Door Company, Inc.*, 127 NLRB 1360, 1371, enf'd 290 F. 2d 22 (C.A. 7). As the Board found, Reese and Byrd maintained a personal friend-hip outside the plant (R. 66, 38; Tr. 551-552), and Reese's emark, though impulsive and coarse, was not intended as a challenge to the Company's authority. Rather, it was a emark made to a person Reese considered a friend and was

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[9] Although the three extrusion operators were in fact related, it s clear that, as the Trial Examiner found, this was not the sense in vhich the remark was meant (R. 39, fn. 39).

[10] Petitioner's assertion (Br. p. 12) that the Board is bound by the unanimous sworn testimony of Petitioner's witnesses that Reese was dis-harged solely because of his insubordinate conduct" is contrary to ettled law. "Even were the employer's evidence uncontradicted as to is motive behind any certain action, the Board may, but need not, ccept it." *N.L.R.B. v. Mrak Coal Company, Inc.*, 322 F. 2d 311, 313 (C.A. 9); accord, *Shattuck Denn Mining Corp. v. N.L.R.B.*, 362 F. 2d 466, 470 (C.A. 9); *Great Atlantic & Pacific Tea Co. v. N.L.R.B.*, 354 F. 2d 707, 709 (C.A. 5).

expressive of Reese's anger at not receiving what he and his co-workers considered an adequate increase (Tr. 573). The remark was not made in the presence of other people, was not directed at Byrd or anyone else personally but at the Company generally, and was couched in language not at all uncommon among industrial employees.[11] At worst, the remark was, in context, no more offensive than that involved in *N.L.R.B. v. Thor Power Tool Co.*, 351 F. 2d 584 (C.A. 7) where an employee-grievance committeeman, in the course of a heated grievance meeting, referred to one of the company officials present as a "horse's ass." The Seventh Circuit upheld the Board's finding that the discharge of the employee for making this remark violated Section 8(a)(1) of the Act. The court noted that while flagrant misconduct during the course of Section 7 activity does not immunize the actor against disciplinary action,

> "not every impropriety committed during such activity places the employee beyond the protective shield of the act. The employee's right to engage in concerted activity may permit some leeway for impulsive behavior, which must be balanced against the employer's right to maintain order and respect. [citation omitted] Initially, the

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[11] As the Supreme Court has noted, "Both labor and management often speak bluntly and recklessly, embellishing their respective positions with imprecatory language." *Linn v. United Plant Guard Workers*, 383 U.S. 53, 58, and see the dissenting opinions of Mr. Justice Black (at pp. 67-68) and Mr. Justice Fortas (at p. 70); see also, *Butcher Boy Refrigerator Door Company, Inc., supra*, 127 NLRB at 1371: "We are not here concerned with a living room or parlor discussion . . . . The incident arose in the shop, in an extremely tense atmosphere, and was heard by an audience of men. . . ."

> responsibility to draw the line between these conflicting rights rests with the Board, and its determination, unless illogical or arbitrary, ought not to be disturbed. In the instant case, we cannot say that the Board's conclusion that [the employee's] remark was within the protection of section 7 was either unreasonable or capricious."

351 F. 2d at 587.

Nor did Reese intend the remark to go beyond Byrd, for when Byrd asked Reese whether he wanted the report to reflect the remark, Reese told Byrd that he should only report that he wanted the raise added to his next raise so he would feel he was receiving an appreciable increase (R. 66, 35; Tr. 86, 576-577). Further, Byrd himself testified that he was generally not at all shocked by the use of some coarse language and that, by the day after the incident, he again engaged in personal conversation with Reese (R. 66, 39; Tr. 552, 557).[12]

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[12] The Company argues that Byrd was so angered by the remark that he wanted to fire Reese on the spot (Br. p. 9). However, it is clear from the record that only when Lux confronted Byrd by asking him whether he was in the habit of allowing his employees to speak to him in that manner, did Byrd say that he was angry enough to have fired Reese on the spot (R . 35; Tr. 486). Byrd's excuses to Lux for not having taken action himself were that he was so taken aback that he decided to wait for Lux to return and that he did not know he had the authority to fire employees under his supervision (R. 35; Tr. 439, 486). But even if Byrd were angered by Reese, Byrd's comments at the time indicate that his anger was due to his inability to understand the refusal of the raise and not with the language used to reject it (R. 39; Tr. 86).

In drawing the inference that Reese was discharged for his concerted activity, and not because of his remark to Byrd, the Board also relied on the fact that Reese was punished by the most severe penalty available to the Company. The Company's personnel manual[13] provided for punishment for insubordinate behavior ranging from a reprimand to discharge. It also provided for a system of multiple warnings (Tr. 412) and for clearing an employee's record when he was subjected to no disciplinary action for six months. Yet Reese was discharged when, for the first time in three years, he acted in a way which the Company now contends was insubordinate. Not only was this the first problem of this type which Reese encountered (R. 40; Tr. 68), but there is no showing that other employees had ever been discharged for using similar language. Moreover, Reese was considered a good employee during his entire tenure (R. 67, 32; Tr. 454);[14] he had made money-saving suggestions for solving problems the Company encountered with the machine on which he worked (R. 32, 67; Tr. 456-458); at the time of his discharge Reese was being considered for a supervisory position (R. 35; Tr. 89); and the Company's personnel manager testified that the Company was having

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[13] Quoted in relevant part at R. 39-40.

[14] Though Reese's production fell below standard for a short time during January 1966, this was admittedly not a consideration at the time of his discharge (R. 32, 67; Tr. 590-591). Further, his production had improved markedly since then and he was offered a merit increase in March (R. 32; Tr. 453-454) in the same amount as that offered "Bootsie" Reese, whom the Company considered an "excellent" employee (Tr. 308).

trouble retaining skilled employees (R. 67, 28; Tr. 350, 354, 387, 398-399).[15] In these circumstances, the Company's asserted explanation for imposing the harshest penalty available to it rather than some lesser penalty [16] – particularly since no one else had heard the conversation between Reese and Byrd and Reese apologized for his remark on numerous occasions – could properly have been rejected by the Board. For "there was nothing in the nature of the misconduct that warranted such extraordinary action" (*Aeronca Mfg. Co. v. N.L.R.B.*, 385 F. 2d 724, 728 (C.A. 9)), and the Board properly considered the severity of the punishment as one of the factors supporting its conclusion herein.[17]

Indeed, the Company's treatment of Reese, even as compared to its treatment of the other two extrusion operators who also rejected the raise, compellingly shows that its real motive for discharging him was the strength with which he rejected the proffered raise and thereby underlined the

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[15] This testimony was the basis of the Board's dismissal of an 8(a)(1) allegation based upon a wage increase offered during a union organizing campaign (R. 28).

[16] Lux testified that he had "a responsibility to management and to the comapny * * * [to] maintain order and discipline of the employees" (Tr. 505) and that he did not consider Reese's apologies to be sufficient to mitigate the alleged seriousness of the offense (Tr. 506).

[17] We do not dispute petitioner's assertion that the Board ought not to substitute its judgment for management's (pet. br. pp. 13-14). But the Board has not done so here. Rather, it has merely balanced, as one of the factors bearing on petitioner's motivation, the nature of Reese's offense and the severity of the punishment meted out for it. *Aeronca, supra; N.L.R.B. v. Sebastopol Apple Growers Union*, 269 F. 2d 705, 710 (C.A. 9); *N.L.R.B. v. Cousins Associates, Inc.*, 283 F. 2d 242, 243 (C.A. 2).

unwelcome fact that his refusal was intended to effectuate an anticipated demand for higher wages. The Company states that it did not discharge Reese merely because he used coarse language (R. 39; Tr. 553). Yet the use of such language marks the only difference between Nhoon Reese's refusal to accept the increase (whereupon he was discharged without being tendered any explanation of the purpose of the increase) and the otherwise identical refusals of Powell and "Bootsie" Reese (to which the Company reacted by explaining that purpose in order to induce them, as it did, to accept the increase). Thus, at the time of the discharge Lux was aware that both Nhoon Reese and Powell had refused the increase for the same reasons (*supra,* p. 6).[18] But when Lux spoke to Powell about the matter, he explained the purpose of the increase, assured Powell that it would not affect any later wage evaluations based on new responsibilities, accepted Powell's apology for "causing this confusion," and allowed him to change his mind and accept the increase (R. 37; Tr. 116, 433, 517).[19] However, in his later interview with Reese, Lux never explained this distinction, never gave Reese a chance to change his mind, and refused to accept Reese's numerous and apparently sincere apologies. Rather, he told Reese that apologies did not excuse his actions toward his supervisor, that the Company could not tolerate such behavior, that he had no choice but

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[18] "Bootsie" Reese's merit interview occurred after Nhoon Reese's discharge (R. 37, 67; Tr. 306).

[19] Bootsie Reese's merit review was conducted in a similar manner. Thus, when Bootsie Recse refused to accept the raise, he was told that it was in recognition of past performance and would not affect any future increase based on new responsibilities (R. 37, 67; Tr. 307-308).

to discharge him, and that employees could not be permitted to gain the notion that they could speak to supervisors in that manner (R. 35; Tr. 88-90, 441-442, 548, 549). Nor was Lux moved by Reese's protestation that he made the remark to Byrd because he had considered Byrd a friend and thought the remark would be held in confidence (R. 36; Tr. 88-89). When Reese appealed to Byrd to explain this to Lux, Byrd said he was sorry, but he had already reported the incident (R. 36; Tr. 88-90). The Company, then, discharged a skilled and highly regarded employee while retaining the two other employees who acted in a similar manner. This, when coupled with the other circumstances of the case, provided ample basis for the Board's finding that since Powell and "Bootsie" Reese only accepted the increase after being assured that it was based on past performance, "what really disturbed Lux was his concern about the concerted action of the employees in rejecting the merit increase and the realization that the rejection presaged a demand for higher wages" (R. 67), and that the discharge was intended "to foreclose such concerted activity in the future." (R. 68).

CONCLUSION

For the reasons stated above, we respectfully submit that the petition for review should be denied and that a decree should issue enforcing the Board's order in full.

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February 1968.

CERTIFICATE

The undersigned certifies that he has examined the provisions of Rules 18 and 19 of this Court and in his opinion the tendered brief conforms to all requirements.

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Assistant General Counsel,
National Labor Relations Board

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid of protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

UNFAIR LABOR PRACTICES

Sec. 8(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified,

or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part of relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified

by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * *

APPENDIX B

Index to Reporter's Transcript
(Numbers are to pages of reporter's transcript)

Board Case No. 31-CA-387

GENERAL COUNSEL'S EXHIBITS

No.	Identified	Offered	Received in Evidence
1(a)-1(f)	6	6	6
2	31	58	60-61
3	55-56	–	403 (rejected)
4	108	–	–
5	474	–	–

RESPONDENT'S EXHIBITS

No.	Identified	Offered	Received in Evidence
1	10	10	16
2	–	43	52
3	107	107	108
4	160-161	161	183-184
5	191	200	203
6a & b	203	205	206
7a & b	206	206	207-208
8	208	222	222-223
9	329	329	332
10	355	360	360
11	400	402-403	403
12	–	581	581
13	581	582	582